



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,992	05/31/2006	Reiner Marchthaler	10191/4431	7077
26646 7590 03/16/2011 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER				
RAO, ANAND SHASHIKANT				
ART UNIT		PAPER NUMBER		
2486				
MAIL DATE		DELIVERY MODE		
03/16/2011		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/563,992

**Applicant(s)**

MARCHTHALER ET AL.

**Examiner**

Andy S. Rao

**Art Unit**

2486

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-SB/US)  
Paper No(s)/Mail Date 1/9/06
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### **Response To Request For Reconsideration**

1. Applicant's arguments filed on 1/3/11 with respect to claims 20-39 have been fully considered but they are not persuasive.
2. Claims 20-39 remain rejected under 35 U.S.C. 102(e) as being anticipated by Spero, as was set forth in the Office Action of 8/18/20.
3. The Applicant presents two substantive arguments contending the Examiner's pending rejection of claims under 35 U.S.C. 102(e) as being anticipated by Spero, as was set forth in the Office Action of 8/18/20. However after a careful consideration of the arguments presented and further scrutiny of the applied reference, the Examiner must respectfully disagree and maintain the grounds of rejection for the reasons that follow.

After summarizing the current stage of prosecution (Request For Reconsideration of 1/3/11: page 5, lines 1-11), establishing the legal basis for the Applicant's arguments (Request For Reconsideration of 1/3/11: page 5, lines 11-21), the Applicant argues that Spero fails to disclose the feature of "...a control device that controls the antiglare mechanism as a function of a signal derived from the image acquisition mechanism..." or the feature of "...a signal derived from the image acquisition mechanism including data of a head position or a face-covering of a vehicle occupant..." (Request For Reconsideration of 1/3/11: page 5, lines 22-26) and further attempts to buttress this argument with Applicant's own understanding of the applied reference (Request For Reconsideration of 1/3/11: page 5, lines 27-28; page 6, lines 1-14). The Examiner vehemently disagrees. The Abstract clearly establishes that an image of the eyes of the driver is processed by the image processing system (Spero: Abstract, lines 1-10), and that the detector is

actually a camera facing inward to the driver (Spero: column 7, lines 15-25), and not just a series of LEDs for eye position detection. The Examiner further notes that the determination of whether the face is covered would be part of the determination of determination eye spacing and glare (Spero: column 10, lines 10, lines 20-65), as having sunglasses would lead to such situations. Accordingly, the Examiner maintains that the limitation is met.

Lastly, the Applicants argue that Spero fails to disclose a feature of "...on limiting the spectrum of light into the vehicle... as recited in claim 33 (Request For Reconsideration of 1/3/11: page 6, lines 17-28). The Examiner flatly disagrees. Spero clearly discloses treating the windshield with a dichroic film where only certain types of radiation are admitted (Spero: column 8, lines 40-65). To the Examiner the use of a dichroic filter would clearly read on limiting a spectrum of admitted light into the vehicle interior. According, the Examiner maintains that this limitation is met, as well.

### **Conclusion**

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andy S. Rao whose telephone number is (571)272-7337. The examiner can normally be reached on Monday-Friday 9AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mehrdad Dastouri can be reached on 571-272-7418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

asr  
/Andy S. Rao/  
Primary Examiner, Art Unit 2486  
March 14, 2011